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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Plaintiff and Respondent,

v.

J. GREENBURG, D.D.S., INC.,

Defendant and Appellant.

B237262

(Los Angeles County
Super. Ct. No. BS128607)

APPEAL from an order of the Superior Court of Los Angeles County.

Ruth Ann Kwan, Judge. Affirmed.

Shapero, Shapero & Hurst and Steven J. Shapero for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Louis Verdugo, Assistant Attorney
General, Angela Sierra and Anthony V. Seferian, Deputy Attorneys General, for
Plaintiff and Respondent.

Defendant and appellant J. Greenburg, D.D.S., Inc. (J. Greenburg) appeals an amended judgment obtained by plaintiff and respondent California Department of Fair Employment and Housing (the department) naming J. Greenburg as an additional judgment debtor.

The issue presented is whether substantial evidence supports the trial court's determination that J. Greenburg is a continuation of Jonathan Greenburg, D.D.S., Inc. (Jonathan Greenburg), the original judgment debtor. Because there is substantial evidence of J. Greenburg's liability as a continuation of Jonathan Greenburg, the trial court properly exercised its jurisdiction under Code of Civil Procedure section 187 to add J. Greenburg as a party to the judgment.

BACKGROUND

In 2002, Jonathan Greenburg, D.D.S. (Dr. Greenburg)¹ practiced dentistry in partnership with Brian Keropian, D.D.S., with offices in Tarzana and Valencia. Marissa Ayala was a dental assistant working for Keropian in the Tarzana office. In 2005, Dr. Greenburg incorporated Jonathan Greenburg and was the corporation's sole shareholder, board member, and officer. As stated in its articles of incorporation, the purpose of the corporation was to engage in the profession of dentistry.

In July 2006, Keropian fired Ayala. Dr. Greenburg then hired her to work in his Valencia dental office. In November 2006, Ayala filed a complaint with the department against Keropian, alleging Keropian fired her due to her religious beliefs. In December 2006, Dr. Greenburg fired Ayala, telling her "[i]t was critically important not to pursue anything with [Dr. Keropian]"

In July 2007, Ayala filed a complaint with the department against Jonathan Greenburg, alleging she was fired in retaliation for filing an employment discrimination claim against Keropian. In 2008, the department issued an

¹ To recap, we will refer to J. Greenburg, D.D.S., Inc. as J. Greenburg, Jonathan Greenburg, D.D.S., Inc. as Jonathan Greenburg, and Dr. Jonathan Greenburg as Dr. Greenburg.

accusation against Jonathan Greenburg, and the Fair Employment and Housing Commission (the commission) conducted an administrative hearing. In 2009, Dr. Greenburg filed for bankruptcy.

The commission issued its decision in January 2010, ruling that Ayala was fired in retaliation for filing a complaint with the department against Keropian, in violation of the Fair Employment and Housing Act (FEHA), Government Code section 12940, subdivision (h) (an employer may not retaliate against an employee for exercising fair employment rights). The commission ordered Jonathan Greenburg to pay Ayala \$18,148 in back pay and \$15,000 for emotional distress damages, and to pay an administrative fine of \$25,000. It also ordered the corporation to provide training to its supervisors and managers, including Dr. Greenburg, about prevention of retaliatory employment practices, and to post notices in the workplace about the commission's decision and the employees' FEHA rights.

The commission's order was served on February 1, 2010. Jonathan Greenburg did not seek reconsideration or review of the order, and it became final on April 1, 2010. (Gov. Code, §§ 11521, subd. (a), 11523.)

Jonathan Greenburg failed to comply with the commission's order. Instead, on April 29, 2010, Dr. Greenburg dissolved the corporation and 13 days later formed J. Greenburg. In the certificate of dissolution, Dr. Greenburg declared Jonathan Greenburg "never incurred any known debts or liabilities." Dr. Greenburg failed to notify the department or commission that Jonathan Greenburg was being or had been dissolved, a violation of Corporations Code section 1903, subdivision (c). The declared purpose of J. Greenburg in its articles of incorporation was to engage in the profession of dentistry.

In September 2010, the department filed a petition in the superior court for entry of judgment on the commission's decision (Gov. Code, § 12973), naming both corporations, Jonathan Greenburg and J. Greenburg, as respondents. In July 2011, it filed a motion for entry of judgment. It argued J. Greenburg was the alter

ego and successor of Jonathan Greenburg and submitted evidence of the following facts: Dr. Greenburg dissolved Jonathan Greenburg in the same month the commission's order became final and declared in the certificate of dissolution that Jonathan Greenburg had never incurred any known debts or liabilities; the corporation failed to comply with the commission's order or give notice of its dissolution to the department; Dr. Greenburg formed J. Greenburg less than two weeks after Jonathan Greenburg was dissolved, for the same declared purpose—to engage in the practice of dentistry; and Jonathan Greenburg and J Greenburg had the same corporate address, chief executive officer (Dr. Greenburg), secretary (Dr. Greenburg), and chief financial officer (Dr. Greenburg).

In opposition to the motion, J. Greenburg argued it was not the alter ego or successor of Jonathan Greenburg. Dr. Greenburg declared Jonathan Greenburg transferred no assets to J. Greenburg upon dissolution, as the latter corporation was started with funds borrowed from a third party. Dr. Greenburg further declared J. Greenburg does not provide “traditional dental services” to patients, but instead “is in the sleep apnea business.” But he admitted during discovery that ““You have to be a dentist to treat a patient with sleep apnea with an oral appliance””

On September 22, 2011, the trial court granted the department's motion for entry of judgment against both corporations, finding J. Greenburg was “the successor and/or continuation of” Jonathan Greenburg. The court expressly declined to reach the issue of whether J. Greenburg was Jonathan Greenburg's alter ego.

J. Greenburg appeals the resulting judgment.

DISCUSSION

J. Greenburg contends it is neither the alter ego nor successor of Jonathan Greenburg.

“When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it

into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.” (Code Civ. Proc., § 187.) The court’s authority to use ““all the means necessary”” to carry its jurisdiction into effect includes the authority to modify a judgment by adding a debtor on the ground it is a successor or continuation of the primary debtor. (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 752 (*McClellan*); *Blank v. Olcovich Shoe Corp.* (1937) 20 Cal.App.2d 456 (*Blank*).) The rationale is that such an addition merely inserts the correct name of the real actor, the predecessor debtor’s successor or continuation. (*McClellan, supra*, at p. 752; *Blank, supra*, at p. 461.)

We review an order adding a judgment debtor for substantial evidence. (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 777.)

“Under certain circumstances corporations cannot escape liability by a mere change of name or a shift of assets when and where it is shown that the new corporation is, in reality, but a continuation of the old. Especially is this well settled when actual fraud or the rights of creditors are involved, under which circumstances the courts uniformly hold the new corporation liable for the debts of the former corporation.” (*Blank, supra*, 20 Cal.App.2d at p. 461.) For example, a corporation that acquires the assets of another corporation has been held to be a mere continuation of the latter, and therefore liable for its debts, “upon a showing of one or both of the following factual elements: (1) no adequate consideration was given for the predecessor corporation’s assets and made available for meeting the claims of its unsecured creditors; (2) one or more persons were officers, directors, or stockholders of both corporations.” (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 29.)

Here, substantial evidence supports the trial court's determination naming J. Greenburg as a judgment debtor due to its status as a continuation of Jonathan Greenburg.

First, Dr. Greenburg dissolved Jonathan Greenburg in the same month the commission's order became final. The trial court could reasonably infer from the coincident timing that Jonathan Greenburg was dissolved to avoid compliance with the commission's order. Dr. Greenburg's declaration in the certificate of dissolution that Jonathan Greenburg had no known liabilities further indicated the corporation was dissolved to avoid the order, as did the corporation's failure to give notice of its dissolution to the department.

Second, Dr. Greenburg formed J. Greenburg less than two weeks after Jonathan Greenburg was dissolved, and the articles of incorporation stated it, like Jonathan Greenburg, was formed to engage in the practice of dentistry. The trial court could reasonably infer from these facts that J. Greenburg was created to continue Jonathan Greenburg's business. That the two corporations engaged in different dentistry specialties did not compel the conclusion that the entities were distinct.

Finally, Jonathan Greenburg and J Greenburg had the same corporate address and the same officer—Dr. Greenburg.

Substantial evidence thus supports the conclusion that J. Greenburg was a mere continuation of Jonathan Greenburg. Therefore, the trial court properly imposed successor liability on J. Greenburg for the judgment against Jonathan Greenburg.

J. Greenburg argued below and contends here that it cannot be held to be Jonathan Greenburg's successor because no asset was transferred to it from Jonathan Greenburg. The trial court rejected the argument, observing that both Jonathan Greenburg and J. Greenburg, as professional dental corporations, were required to be backed by a professional—Dr. Greenburg—who possessed a dentistry license. It stated, "The asset that's being transferred is his license. The

asset of Jonathan Greenburg, DDS is the fact that he himself has a license that allows Jonathan Greenburg, DDS to exist, and J. Greenburg DDS exists because of his license. [¶] . . . [¶] I mean, he couldn't have been doing sleep apnea but for his license and that is an asset.”

We need not determine whether Dr. Greenburg's dentistry license constituted an asset that was transferred from Jonathan Greenburg to J. Greenburg because when a successor corporation is formed to hinder recovery of a judgment against the predecessor, successor liability requires no finding that any asset was transferred.

In *McClellan*, a contractor agreed to perform earthquake repair work for a condominium association (Peppertree). Peppertree failed to pay for the work. The contractor obtained an arbitration award against Peppertree, which was confirmed by the trial court. (89 Cal.App.4th at p. 749.) Earlier, bankruptcy counsel had recommended to Peppertree's board that it file for bankruptcy and start a new association, given Peppertree's debts. The board complied, forming Northridge Park Townhome Owners Association, Inc. (Northridge Park), a new corporation, which immediately became the homeowners association for the complex. (*Id.* at pp. 749-750.) The contractor moved to amend the judgment to add Northridge Park as a judgment debtor on the grounds it was merely a continuation of Peppertree and had been created to hinder, delay and defraud Peppertree's creditors. The contractor presented evidence to show that ““aside from the name, there is no difference whatsoever [between] [Peppertree] and Northridge Park. Northridge Park conducts the same business, collects the same revenues, operates through the same Board of Directors, has the same management company and presides over the same Condominiums, as did [Peppertree].”” (*Id.* at p. 750.) That motion was granted and the appellate court affirmed, concluding the contractor presented sufficient evidence to show that Northridge Park was a mere continuation of Peppertree, fraudulently created in order to escape Peppertree's

debts. (*Id.* at pp. 755-756.) There was no evidence that Peppertree transferred any assets to Northridge Park.

Transfer of assets for inadequate consideration is merely evidence that the successor corporation is a continuation of the predecessor, not the sine qua non of successor liability. Here, substantial evidence supported the trial court's ruling that J. Greenburg was the successor corporation to Jonathan Greenburg. The department need not also show Jonathan Greenburg also transferred assets to J. Greenburg.

DISPOSITION

The judgment is affirmed.

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CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.